United States Court of Appeals

for the Second Circuit

APPENDIX

76-1230

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

P/S

DOCKET NO. 76-1230

UNITED STATES OF AMERICA

APPELLEE

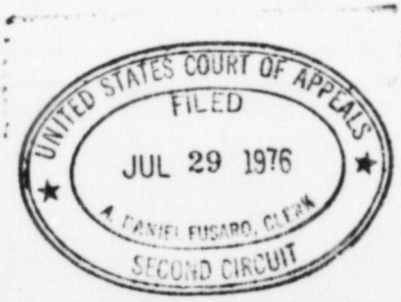
vs.

WILLIAM CARLO

APELLANT

APPENDIX OF APPELLANT
WILLIAM CARLO

GREGORY B. CRAIG, ESQ.
COUNSEL FOR APPELLANT
30 SOUTH STREET
MIDDLEBURY, VERMONT
05753



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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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APPELLEE

vs.

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APPENDIX OF APPELLANT WILLIAM CARLO

GREGORY B. CRAIG, ESQ.
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30 SOUTH STREET
MIDDLEBURY, VERMONT
05753

CRIMINAL DOCKET
UNITED STATES DISTRICT COUR.

JUDGE NEWMAN

N-75-95

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U.S.:*
vs.	Peter C. Dorsey, U.S. Atty.
WILLIAM CARLO	~~Thomas R. Maxwell, Jr.~~
	Asst. U.S. Atty.
	~~915 Lafayette Blvd~~
	~~Bridgeport, Conn~~
	Peter A. Clark
	William F. Dow, III
	For Defendant:
	Gregory B. Craig
	770 Chapel Street
	New Haven, Conn

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 2 mailed ✓	Clerk								
J.S. 3 mailed ✓	Marshal								
Violation U.S.C.	Docket fee								
Title 18									
Sec. 922(b)(3) 924(a) 922(b)(5) 922(b)(1) 922(m)									

DATE 1975	PROCEEDINGS
6/25	The Grand Jury at New Haven returned a True Bill of Indictment charging violatiion of Title 18, U.S.C. Sections 922(b)(3), 924(a) 922(b)(5) 922(b)(1) and 922(m)--9 count indictment--Cts. 1 & 3--being a licensed dealer, did sell and deliver, a firearm, to a person who did not live in the State of Conn. Cts. 2, 4 & 6--being a licensed dealer of firearms and ammunition, did sell and deliver, a firearm, without noting in his records, th name, age and address of the party to whom he sold the firearm. Ct. 5-being a licensed dealer of firearms, sold a firearm to person under the age of 21, Cts. 7, 8 & 9 being a licensed dearler of firearms and ammunition did fail to make appropriate entry in his firearms acquistion and disposition record book. Summons may issue for July 21, 1975 at 10:00 A.M. in Hartford. Newman, J. m-6/26/75.
6/27	Summons issued in duplicate together with a certified copy of the Indictment handed to U.S. Marshal for service.
7/7	Marshal' return showing service, filed. Summons, with receipt acknowledged attached thereto.
7/21	PLEA: Appointment of Counsel, Office of the Public Defender Conditioned upon payment of a fee of $500.00 within six months in payment for such services. Plea of not guilty entered to Count

DATE 1975	PROCEEDINGS
7/21	One thru Nine. CJA-23, filed. Newman, J. m-7/23/75.
7/23	Notice of Readiness, filed by government.
7/22	Court Reporter's Notes of Proceedings (Plea) held on July 21, 1975, filed. Gale, R.
8/6	Court Reporter's Sound Reocrdings of Proceedings held on July 21, 1975, filed. Gale, R. (Plea)
1976	
1/13	Deft's Pro Se request for reduction in amount of payment towards Atty's Fee, together with CJA Form 23, filed and endorsed as follows: " Contribution tor legal tee reduced to $250.00. copies mailed to Atty. Craig and Dorsey.
1/19	On JON's Jury Assignment List: Over to next Criminal Assignment List. Newman, J. m-1/19/76.
1/26	Motion to Dismiss Counts Seven, Eight and Nine and Motion to Sever Counts, or in the Alternative to Compell the Covernment to Elect Between Counts, filed by deft.
2/6	Memorandum in Support of Defendant Carlo's Motion to Sever Counts, filed by deft.
2/19	Memoradum in Opposition to Defendant Carlo's Motion to Sever Counts filed by govt.
2/24	Court Reporter's Notes of Proceedings (Jury Selection) held on 2/24/76,filed, Gale, R.
2/24	Marshal;s return showing service, filed: Subpoena to testify and subpoena ticket.
2/24	ON JON's Jury Assignment List: Ready, jury impanelled. Trial to begin week of 3/22/76. Newman, J. m-2/25/76.
2/24	JURY TRIAL BEGINS: 12:53 P.M. Oath on Voir Dire administered. 47 jurors respond to roll call. 1 juror excused for cause. Govt. allowed 7 challenges and Deft. allowed 12 challenges. Basic panel of 33 names draw. 12 jurors and 2 alternates impanelled and sworn. Evidence in this case to begin March 22, 1976. 1:20 P.M. Jury excused subject to call. Newman, J. m-2/25/76.
2/26	Marshal's return showing service; filed: Subpoena to Produce.
3/2	Marshal's return showing service, filed: Subpoena to testify and Subpoena to Produce Document or Object.
3/17	Marshal's return showing service, filed: Subpoena to testify.
3/22	Ruling on Defendant's Motion to Sever Counts, filed and entered. Motion to Sever Cts 5, 6 and 9 is granted. Newman, J. m-3/22/76. copies handed to counsel of record.
3/23	JURY TRIAL CONTINUES: 10:30 A.M. Amended Six Count Indictment, fil. by govt. Law Student Intern Form, filed by deft and approved. Govt. advises Court of changes in the Indictment. Counsel for deft discusses Cts 2 & 4 of the Old Indictment and Cts 2 & 5 of the new indictment. Court informs counsel that juror # 9 Miss Best moved to FLA. and that Alt. #1 will take her place. 10:54 A.M. 13 jurors present. 2 Govt. witnesses sworn and testified. Govt exs 1 thru 3, 4(a), 4(b), 5 and 6, filed. Jencks Act material 3501 and 3502, marked for ID. Deft. Ex. 501 marked for ID. 12:37 P.M. Govt. rests. Deft's Motion for Judgment of Acquittal heard at side bar is denied. Deft. sworn and testified on his own behalf. Second Amended Indictment, filed by govt. 4 Deft. witnesses sworn and testified. 4:58 P.M. Jury excused until 10:00 A.M. of 3/24/76. 5:05 P.M. Court adjourned.
3/24	Defendant's Request to Charge and Memorandum in Support of Deft's. Request for an Entrapment Instruction, filed by deft.

DATE 1976	PROCEEDINGS
3/24/76	JURY TRIAL CONTINUES: 10:25 A.M. Hearing on rebuttal testimony begins. 10:45 A.M. 13 jurors present. 1 Deft. witness sworn and testified. 10:52 A.M. Defense rests. 1 Govt. rebuttal witness sworn and testified. 11:00 A.M. Govt. rests. In the absence of the jury Deft. advises Court it will attempt to locate a rebuttal witness. Court asks Govt. to Clarify Cts 3 and 6 of the Indictmen Govt. withdraws Cts 3 & 6 of the Indictment an amended Indictment is to be submitted. Court hears requests to charge. Jencks material 3503, marked for ID. Justification Defense, filed by govt. Amended Indictment, filed. Counsel for deft. advises Court that is has no more witnesses. 2:21 to 2:46 P.M. Govt. opens. 2:46 to 3:15 Deft. closes. 3:15 to 3:27 P.M. Govt. rebuttal. 3:28 P.M. Court excuses alt. juror. 3:29 P.M. to 3:48 P.M. Court charges the jury. 3:48 jury retires to the jury room. Deft. takes exception to the charge, no further charge to be given. 3:55 By agreement of counsel the exhibits are brought to the jury and deliberations begin. Indictment will be brought in when new corrected Indictment is filed. 4:15 P.M. Corrected Indictment is brought to the jury. 4:37 P.M. the jury returns the following verdict: GUILTY as charged in Cts 1 thru 4. Deft. request poll of the jury, granted and all answer affirmatively. 4:42 P.M. jury is excused until Mon. 3/29/76 at 10:00 A.M. Verdict is verified and ordered recorded. Govt. moves to revoke bond or for an increase in the bond of the deft. motion denied, same bond to continue. Sentencing set for 4/21/76. 4:50 P.M. Court adjourned. Newman, J. m-3/25/76.
3/24	Marshal's return showing service, filed: Subpoena to testify.
3/25	Deft's submission of Voir Dire Questions, filed.
3/25	Court Reporter's Notes of Proceedings (trial) held on 3/23 and 3/24/76, filed. Gale, R.
3/25	Trial Memorandum, filed by govt.
4/21	DISPOSITION: Over to April 23, 1976 at 10:00 A.M. Newman, J. m-4/22/76.
4/23	DISPOSITION: Over for two weeks. Govt is to ascertain from the Asst. U.S. Atty. for S.D.N.Y., the views of Mr. Carlo's cooperation with the govt in their investigations. Newman, J. m-4/23/76.
4/26	Court Reporter's Notes of Proceedings (DISP) held on Apr. 23, 1976, filed. Russell, R.
5/7	DISP. Govt. moves to dismiss Cts 1, 2, 3 and 4, suspended after three months and Ct 1 is placed on probation for three years, said sentences are to run concurrent with each other. Bond on appeal is set at $1,000.00 non surety. Notice of appeal, filed by deft. Newman, J. m-5/10/76.
5/7/76	Appearance Bond in the amount of $1,000.00 non surety, filed by deft. and approved. Newman, J. m-5/7/76.
5/10	Certified copy of the notice of appeal and docket entries mailed to U.S.C.A.
5/13	Court Reporter's Notes of Proceedings (DISP) held on 5/7/76, filed. Russell, R.
5/14	Judgment and Commitment, filed and entered. Newman, J. m-5/14/76. Two certified copies hand to U.S. Marshal for service.
5/19	Court Reporter's Transcript of proceedings held on March 23, 1976 (Trial) (Sentence-month of William Carlo), filed. (Gale, R.)
5/21	Copy of Scheduling Order from the U.S.C.A, filed and entered. Fusaro, C. m-5/21/76.
5/25	Notice of Appeal endorsed: Leave to Proceed in Forma Pauperis granted. Newman, J. m-5/25/76. Certified copy of notice of appeal

DATE 1976	PROCEEDINGS
5/25	and docket entries mailed to Court of Appeal.
5/25	CJA Form 21 authorizing transcript of trial, filed. Newman, J. copies distributed.
6/1	Motion to Dismiss Counts Five, Six and Nine of the Original Indictme filed by govt. and So Ordered. Newman, J. m-6/2/76. copies mailed to counsel
6/15	Court Reporter's Transcript of Proceeding (trial) held on March 23, and 24, filed. Gale, R. (2books)
6/17	CJA Form 21 approving payment of $456.00 to Gerald Gale, Court Report filed. Newman, J. copies distributed.
6/18	Record on Appeal sent U.S. Court of Appeals. Copies of Index sent counsel of record.
6/25/76	Receipt for Record on Appeal acknowledged by Clerk, U.S.C.A. and filed.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-75-95
WILLIAM CARLO	:	

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT I

On or about July 11, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richar Dotchin, a firearm, that is a Spanish 32 caliber semi-automatic pistol s/n 464, WILLIAM CARLO then knowing and having reasonable cause to believe that said Richard Dotchin did not reside in the State of Connecticut in which WILLIAM CARLO'S place of business was located at the time of said sale and delivery, in violation of Title 18, United States Code, Sections 922(b)(3) and 924(a).

COUNT II

On or about July 11, 1974 at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, a Spanish 32 caliber semi-automatic pistol s/n 464, without noting in his records, required to be kept pursuant to Title 18, United States Code, Sections 922(b)(5) and 924(a). APP 5

COUNT III

On or about July 22, 1974 at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, an Erl Svendsen Model 4 Aces 22 caliber derringer s/n 4883, WILLIAM CARLO then knowing and having reasonable cause to believe that the said Richard Dotchin did not reside in the State of Connecticut in which WILLIAM CARLO's place of business was located at the time of said sale and delivery, in violation of Title 18, United States Code, Sections 922(b)(3) and 924(a).

COUNT IV

On or about July 22, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, an Erl Svendsen Model 4 Aces 22 caliber derringer s/n 4883, without noting in his records, required to be kept pursuant to Title 18, United States Code, Section 923, the name, age, and place of residence of the same Richard Dotchin, in violation of Title 18, United States Code, Sections 922(b)(5) and 924(a).

A TRUE BILL

FOREMAN

PETER C. DORSEY
UNITED STATES ATTORNEY

THOMAS F. MAXWELL, JR.
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. N 75-95
WILLIAM CARLO	:	

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT I

On or about July 11, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin, a firearm, that is, a Spanish 32 caliber semi-automatic pistol s/n 464, WILLIAM CARLO then knowing and having reasonable cause to believe that the said Richard Dotchin did not reside in the state of Connecticut in which WILLIAM CARLO's place of business was located at the time of said sale and delivery, in violation of Title 18, United States Code, Sections 922(b)(3) and 924(a).

COUNT II

On or about July 11, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, a Spanish 32 caliber semi-automatic pistol s/n 464, without noting in his records, required to be kept pursuant to Title 18, United States Code, Section 923 and regulations thereunder (27 CFR 178.124) the name, age, and place of residence of the same Richard Dotchin, in violation of Title 18, United States Code, Sections 922(b)(5) and 924(a).

On or about the 20th day of June, 1975, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly failed to make appropriate entry in his firearmm acquisition and disposition record book, which he is required to keep pursuant to Title 18, United States Code, Section 923, and a regulation thereunder (27 CFR 178.125[e]), in that he failed to enter under the headings "Description of Firearm" and "Receipt" required information concerning a Spanish 32 caliber semi-automatic pistol s/n 464, well knowing that he had received said firearm, in violation of Title 18, United States Code, Sections 922(m) and 924(a).

COUNT IV

On or about July 22, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, an Erl Svendsen Model 4 Aces 22 caliber derringer s/n 4883, WILLIAM CARLO then knowing and having reasonable cause to believe that the said Richard Dotchin did not reside in the state of Connecticut in which WILLIAM CARLO's place of business was located at the time of said sale and delivery, in violation of Title 18, United States Code, Sections 922(b)(3) and 924(a).

COUNT V

On or about July 22, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, an Erl Svendsen Model 4 Aces 22 caliber derringer s/n 4883, without noting in his records, required to be kept pursuant to Title 18, United States Code, Section 923 and regulations thereunder (27 CFR 178.124) the name, age, and place of residence of the same Richard Dotchin, in violation of Title 18, United States Code, Sections 922(b)(5) and 924(a).

COUNT VI

On or about the 20th day of June, 1975, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly failed to make appropriate entry in his firearms acquisition and disposition record book, which he is required to keep pursuant to Title 18, United States Code, Section 923, and a regulation thereunder (27 CFR 178.125[e]), in that he failed to enter under the headings "Description of Firearm" and "Receipt" required information concerning an Erl Svendsen Model 4 Aces 22 caliber derringer s/n 4883, well knowing that he had received said firearm, in violation of Title 18, United States Code, Sections 922(m) and 924(a).

A TRUE BILL

_____
FOREMAN

PETER C. DORSEY
UNITED STATES ATTORNEY

THOMAS F. MAXWELL, JR.
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. N 75-95

WILLIAM CARLO :

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT I

On or about July 11, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin, a firearm, that is, a Spanish 32 caliber semi-automatic pistol s/n 464, WILLIAM CARLO then knowing and having reasonable cause to believe that the said Richard Dotchin did not reside in the state of Connecticut in which WILLIAM CARLO'S place of business was located at the time of said sale and delivery, in violation of Title 18, United States Code, §922(b)(3) and §924(a).

APP 10

COUNT II

On or about July 11, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, a Spanish 32 caliber semi-automatic pistol s/n 464, without noting in his records, required to be kept pursuant to Title 18, United States Code, §923(g) and regulations thereunder (26 CFR 178.124) the name, age, and place of residence of the same Richard Dotchin, in violation of Title 18, United States Code, §922(b)(5) and §924(a).

duplicity

COUNT III

On or about July 22, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, an Erl Svendsen Model 4 Aces 22 caliber derringer s/n 4843, WILLIAM CARLO then knowing and having reasonable cause to believe that the said Richard Dotchin did not reside in the state of Connecticut in which WILLIAM CARLO'S place of business was located at the time of said sale and delivery, in violation of Title 18, United States Code, §922(b)(3) and §924(a).

COUNT IV

On or about July 22, 1974, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm, that is, anErl Svendsen Model 4 Aces 22 caliber derringer s/n 4843, without noting in his records, required to be kept pursuant to Title 18, United States Code, §923 and regulations thereunder (26 CFR 178.124) the name, age, and place of residence of the same Richard Dotchin, in violation of Title 18, United States Code, §922(b)(5) and §924(a). duplicity

COUNT V

On or about the 6th day of April, 1975, at Stratford, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Bruce Haydusky a firearm, that is, a Bernardelli 7.65 mm semi-automatic pistol, SN 9515, knowing and having reasonable cause to believe that Bruce Haydusky was a person less than 21 years of age, in violation of Title 18, United States Code, §922(b)(1) and §924(a).

COUNT VI

On or about April 6, 1975, at Stratford, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Bruce Haydusky a firearm, that is, a Bernardelli 7.65 mm. semi-automatic pistol, SN 9515, without noting in his records, required to be kept pursuant to Title 18, United States Code, §923 and regulations thereunder (26 CFR 178.124) the name, age, and place of residence of the same Bruce Haydusky, in violation of Title 18, United States Code, §922(b)(5) and §924(a).

COUNT VII

On or about the 20th day of June, 1975, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly failed to make appropriate entry in his firearms acquisition and disposition record book, which he is required to keep pursuant to Title 18, United States Code, §923, and a regulation thereunder (26 CFR 178.125[e]), in that he failed to enter under the headings "Description of Firearm" and "Receipt" required information concerning a

Spanish 32 caliber semi-automatic pistol s/n 464, well knowing that he had received said firearm, in violation of Title 18, United States Code, §922(m) and §924(a).

COUNT VIII

On or about the 20th day of June, 1975, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly failed to make appropriate entry in his firearms acquisition and disposition record book, which he is required to keep pursuant to Title 18, United States Code, §923, and a regulation thereunder (26 CFR 178.125[e]), in that he failed to enter under the headings "Description of Firearm" and "Receipt" required information concerning an Erl Svendsen Model 4 Aces 22 caliber derringer s/n 4843, well knowing that he had received said firearm, in violation of Title 18, United States Code, §922(m) and §924(a).

COUNT IX

On or about the 20th day of June, 1975, at Bridgeport, in the District of Connecticut, WILLIAM CARLO, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly failed to make appropriate entry in his firearms

acquisition and disposition record book, which he is required to keep pursuant to Title 18, United States Code, §923, and a regulation thereunder (26 CFR 178.125[e]), in that he failed to enter under the headings "Description of Firearm" and "Receipt" required information concerning a Bernardelli 7.65 mm semi-automatic pistol, SN 9515, well knowing that he had received said firearm, in violation of Title 18, United States Code, §922(m) and §924(a).

A TRUE BILL

FOREMAN

PETER C. DORSEY
UNITED STATES ATTORNEY

THOMAS F. MAXWELL, JR.
ASSISTANT UNITED STATES ATTORNEY

I hereby certify that the foregoing is a true copy of the original on file. Date: 6/27/75

[illegible] MARKOWSKI
Clerk

By: [illegible]
Deputy In Charge

APP 15

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-75-95
WILLIAM CARLO	:	

MOTION TO SEVER COUNTS OR, IN THE ALTERNATIVE, TO COMPEL THE GOVERNMENT TO ELECT BETWEEN COUNTS

The defendant, William Carlo, respectfully moves this Court, pursuant to Rule 8 (a) and Rule 14 of the Federal Rules of Criminal Procedure, to sever certain counts from the above-captioned indictment, or, in the alternative, to enter an order compelling the Government to elect between certain counts as to which counts will be pursued at trial.

The defendant respectfully submits that Counts One, Two, Three, Four, Seven and Eight should be severed from this indictment or alternatively, that the Government should be compelled to elect between the above-listed group of counts (1,2,3,4,7 and 8) and Counts Five, Six and Nine as to which group of counts will be pursued at trial.

The reasons why this motion should be granted are set forth in the accompanying memorandum.

THE DEFENDANT
WILLIAM CARLO

BY Gregory B. Craig

Gregory B. Craig
Federal Public Defender
770 Chapel Street
New Haven, Connecticut

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. N-75-95
	:	
WILLIAM CARLO	:	

MEMORANDUM IN SUPPORT OF
DEFENDANT CARLO'S MOTION
TO SEVER COUNTS

Introduction

The indictment in this case charges the defendant with nine counts which allege, inter alia, the sale on three different occasions of firearms in violation of various sections of Title 18, United States Code. The defendant respectfully submits that the counts alleging the first two sales (Counts 1 and 3) are properly joined in this indictment but that the inclusion of the count that alleges the third sale (Count 5) violates the joinder provisions of Rule 8(a) of the Federal Rules of Criminal Procedure. The defendant further contends that joinder in this case embodies precisely the type of prejudice Rule 14 of the Federal Rules of Criminal Procedure was written to combat.

I. Rule 8(a), Federal Rules of Criminal Procedure

Rule 8(a) provides:

> Two or more offenses may be charged in the same indictment or information in a separate count for each offense, if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common plan or scheme. (Emphasis added)

The defendant concedes that the offenses charged in Counts1 and 3 are of "the same or similar character" so as to permit joinder under Rule 8 (a); these counts allege two separate sales to the same individual in the same city in Connecticut within the space of two weeks. (Counts 2,4,7 and 8 are companion counts to Counts 1 and 3 and charge failure to keep certain records required by law. Count 6 and 9 are companion to Count 5.)

Count Five, on the other hand, charges the defendant with a different offense involving a third sale to a different individual in a different city in Connecticut and at a period of time eight months after the sale allegedly occured in the other counts. With respect to this third sale, the indictment charges a different crime which will call for different evidence from the Governmnet and a different defense from the defendant. Different witnesses will be called and a totally different jury charge will be required at the trial's conclusion.

The defendant submits that Count Five alleges an offense which is not of the "same or similar character" as the offenses charged in the first and third counts of this indictment. The defendant further submits that the offense charged in Count Five is not based on the "same act or transaction" charged in the first or third counts. Finally, the defendant contends that Count Five cannot be linked with the first or third counts as part of a "common plan or scheme".

In Hill v. United States, 418 F.2d 449 (D.C. Cir. 1968) and Bradley v. United States, 433 F.2d 1113 (D.C. Cir 1969) the court upheld joinder in circumstances significantly different from those

in this case. In Hill and Bradley, counts relating to two robberies two months apart and counts relating to two housebreakings nine days apart were held to be properly joined. In those cases, however, the offenses were allegedly committed on the same premises and the same people were victimized.

In United States v. Quinn, 365 F.2d 256 (7th Cir. 1966), the court dealt with circumstances more applicable to those presented by this case. In Quinn, the court severed one set of counts which dealt with the defendant's alleged misappropriation of certain rent prepayments from a second set of counts which dealt with a misapplication of certain funds several months later. The incidents were totally unrelated, except that the defendant's role in the alleged crimes arose out of the same context; that is, he was the director of a savings and loan association. As in Quinn, the offenses alleged ir this indictment are "of the same character" only insofar as the defendant is charged with crimes which relate to his status as a federally licensed gun dealer. As the court held in Quinn a defendant's particular status -- although a fact relevant and common to all the counts in the indictment -- is insufficient ground to claim that these distinct and otherwise unrelated acts may be properly joined under Rule 8 (a).

Furthermore, it is plain that the alleged offenses are not based on the same act or transaction; not do these offenses constitute a "common plan or scheme". The time lapsed between these alleged offenses is not hours, as in Blunt v. United States, 404 F.2d 1283, 131 U.S. App. D.C. 303 (1968), cert. den., 394 U.S. 909 (1969), or a matter of several days, as in Bayless v.

United States, 381 F.2d 67 (9th Cir. 1967); the time intervening between the offenses alleged in this indictment is more than eight months.

Nor is there any interrelationship between these acts sufficient to satisfy the "common scheme or plan" language in Rule 8 (a). The fruits of one offense have not been used to commit another as in Blunt v. United States, supra and United States v. Leonard, 445 F.2d 234 (D.C. Cir. 1971).

Nor is there an intimate relationship between the offenses such as that found in United States v. Adams, 434 F.2d 756 (2d Cir. 1970). In Adams, the court held that joinder of a narcotics sale count with a narcotics possession count -- where the possession count arose from a search of the defendant upon arrest for the sale -- constituted "part and parcel of trafficking in narcotics." joinder was thus proper.

Finally, because the evidence relevant to Counts One and Three does not overlap in any significant way with the evidence relevant to Count Five, the underlying purpose of Rule 8 (a) is not served by joinder; Trial convenience and economy are not enhanced by joining these offenses. See, 8 Moore's Federal Practice 8.02 [1]. Absent any legitimate interest served by joinder and absent any showing of prejudice to the Government by ordering a severence of counts, this motion should be granted.

II. Rule 14, Federal Rules of Criminal Procedure.

Whether or not joinder is improper under Rule 8 (a), it is prejudicial under Rule 14. That rule provides:

> "If it appears that a defendant... is prejudiced by a joinder of offenses...in an indictment, the Court may order an election or separate trials of counts...or provide whatever other relief justice requires."

The issue of prejudicial joinder of offenses is addressed solely to the discretion of the trial court, Opper v. United States, 348 U.S. 84 (1954).

The defendant respectfully submits that joinder of Counts One and Three with Count Five would prejudice the defendant because it is likely that evidence of guilt in the first two offenses would be cumulated by the jury and used as evidence of guilt in the unrelated offense. */

The prejudicial effect of cumulating evidence has long been recognized. In United States v. Lotsch, U.S. F.2d 35, 36 (2d Cir. 1939) Judge Learned Hand said:

> "There is indeed always a danger when several crimes are tried together, that the jury may use the evidence cumulatively; that it, that, although so much as would be admissible upon only one of the charges might not have persuaded them of the accused's guilt, the sum of it will convince them as to all. This possibility violates the doctrine that only direct evidence of the transaction charged will ordinarily be accepted and that the accused is not to be convicted because of his criminal disposition."

---

*/ Counts One and Three charge the defendant with making unlawful sales of firearms (handguns) to an individual whom the defendant believes was (and is) an undercover agent for the Bureau of Alcohol Tobacco and Firearms in the Department of Treasury. Count Five charges the defendant with making an unlawful sale to a minor. With respect to Count Five, the defendant contends that the firearm in question was, in fact, not a firearm within the meaning of the statute, and that he did not, in fact, make the sale.

See also, Drew v. United States, 331 F.2d 85 (D.C. Cir. 1964); Cross v. United States, 335 F.2d 987 (D.C. Cir. 1964); and Gregory v. United States, 369 F.2d 185 (D.C. Cir. 1966). As the court said in Drew, supra at 89,

> "courts presume prejudice and exclude evidence of other crimes unless the evidence can be admitted for some substantial, legimate purpose. The same dangers appear to exist when two crimes are joined for trial, and the same principles of prophylaxis are applicable."

Unless the evidence of each crime is "mutually admissible in separate trials," Robinson v. United States , 459 F.2d 847, 859, 148 U.S. App. D.C. 58, 70 (1972), the counts should be tried in separate trials. Also United States v. Leonard, 445 F.2d 234, 144 U.S. App D.C. 164 (1971), and Hill v. United States, supra, the court found that joinder of counts charging the robbery of a High's ice cream store on July 27, 1962 with a count charging an attempt to rob a different High's on August 13, 1962 was prejudicial. The court concluded that the evidence of each offense would not have been admissible in a trial for the other. Although the two incidents had many similarities, those similarities were such as would

> "all fit into an obvious tactical pattern which would suggest to almost anyone disposed to commit a depredation of this sort." 331 F.2d at 93.

More recently, that same court found improper the joinder to two sets of counts dealing with different offenses which were allegedly committed by a man in a fur coat.

> "That a man wears a fur coat and hat may help witnesses identify him, but it does not establish a pattern of criminal conduct and made evidence of every offense he commits while so attired admissible in a single trial." United States v. Carter, 475 F.2d 349, 351 (D.C. Cir. 1973)

Even when evidence relevant to different counts is not reciprocally admissible, joinder of those counts may be proper particularly where

> "the evidence as to each [is] short and simple; there [is] no reasonable ground for thinking that the jury could not keep separate what was relevant to each." Drew v. United States, supra at 91.

But, the Drew Court added,

> "If separate crimes are to be tried together...both court and counsel must recognize that they are assuming a difficult task the performance of which calls for a vigilant precision in speech and action far beyond that required in the ordinary trial." at 94

See also, Dunaway v. United States, 265 F.2d 23, 92 U.S. App D.C. 299, 300 (1953).

Moreover, the court in Drew noted that when two crimes are "superficially similar" -- whether in type or in the manner of their alleged commission -- they would have even greater difficulty in keeping the evidence separated. 331 F.2d at 94 n. 21. See also, United States v. Carter, supra, and United States v. Quinn, supra. The evidence in this case, much of which relates to required record keeping procedures and the defendant's alleged failures to adhere to those procedures, is precisely the kind of evidence which drew the court's admonition in Drew.

Conclusion

For all of the foregoing reasons, the defendant respectfully requests that this motion be granted.

THE DEFENDANT
WILLIAM CARLO

BY Gregory B. Craig
Gregory B. Craig
Federal Public Defender
770 Chapel Street
New Haven, Connecticut

CERTIFICATION

I hereby certify that a copy of this Motion was delivered to the Office of the United States Attorney, Post Office Building, New Haven, Connecticut.

Gregory B. Craig
Gregory B. Craig

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. N-75-95
WILLIAM CARLO	:	

MEMORANDUM IN OPPOSITION TO DEFENDANT CARLO'S MOTION TO SEVER COUNTS

FACTS

Defendant WILLIAM CARLO is charged in a single indictment with nine violations of the Gun Control Act. Counts one, two, and seven relate to the sale of a Spanish pistol and incorrect record keeping in connection therewith. Counts three, four and eight charge identical violations with respect to a derringer. Both pistols were sold to the same undercover agent in July of 1974. Counts five, six and nine pertain to violations connected with the sale of a third pistol in April, 1975. CARLO moves for severance of these three counts on the grounds that this sale does not arise from the same act or transaction and that the offenses are not of a same or similar character.

ARGUMENT

Separate counts are joinable in a single indictment if one or more of the following criteria is present: (1) the crimes must

be of the same or similar character, (2) the crimes must be based on the same act or transaction, or (3) the crimes must be based on two or more transactions connected together or constituting parts of a common scheme or design. United States v. Zouris, 497 F.2d 1117 (7 Cir. 1973); United States v. Quinn, 365 F.2d 256 (7 Cir. 1966). Counts five, six and nine probably would not be considered to be part of the same act or transaction alleged in the other counts. On the other hand, they most probably are parts of a common scheme or design, i.e., the continuous operation of an illicit gun business. This observation is not diluted by the mere fact of an eight month hiatus between the pistol sales, since he was at all times during the indictment period a licensed and active gun dealer.

Furthermore, if the crimes charged are of a similar nature, separation of time alone is not grounds for a severance. See, for example, United States v. Merriwether, 486 F.2d 498 (5 Cir. 1973) [three consecutive years of tax violations]; and United States v. Andrino , 501 F.2d 1373 (9 Cir. 1974) [separate extortion schemes separated by more than one year, but violating the same statute].

All of the crimes charged in this indictment are clearly of the same or similar character. Count five alleges a sale to a named individual having reason to believe the buyer was a minor, whereas counts one and three allege sales to a person whom CARLO had reason to believe resided out of state. The only difference between these counts (five vs. one and three) is the subsection of 18 USC §922(b) violated. Count five simply alleges a slightly different way of transgressing a comprehensive regulatory scheme, the purpose of which is to place the onus on the dealer to ascertain certain information

about the buyer before selling him a firearm. Within the framework of the scheme, the distinction between age and place of residence is a distinction with no significant difference.

The rest of CARLO's argument on this point is of even less merit. Count six alleges precisely the same statute and subsection as counts two and four. The same applies to count nine vs. counts seven and eight.

Finally, CARLO has offered no clear demonstration of prejudice which would outweigh the Court's and Government's interest in a single trial. The evidence will be fairly simple, consisting essentially of the purchasers of the firearms and a showing of the absence of proper record keeping with respect to each pistol. No reason appears why the jury could not keep each count separate in their own minds, nor is there any indication that any evidence necessary to prove one or more counts is so prejudicial it would harm the defendant on other counts.

For all of the foregoing reasons, it is respectfully urged that the motion be denied.

Respectfully submitted,

PETER C. DORSEY
UNITED STATES ATTORNEY

BY: PETER A. CLARK
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

V. : CRIMINAL NO. N-75-95

WILLIAM CARLO :

RULING ON DEFENDANT'S MOTION TO SEVER

Defendant has moved to sever counts 5, 6, and 9 of a nine-count indictment that essentially charges three illegal firearms sales. Counts 1 and 3 (and their companion counts, 2, 4, 7, and 8, which charge failure to keep records required by law) charge Carlo with two sales of firearms to the same individual, in both instances with the knowledge that the buyer was not a resident of Connecticut. These two sales allegedly occurred on July 11 and July 22, 1974, in Bridgeport, Connecticut. Count 5 charges a sale of a firearm to a minor in April, 1975, in Stratford, Connecticut. The defendant argues that the charges arising from the latter sale may not be properly joined with the counts based upon the 1974 sales and that, even if properly joined, the Court should sever the counts concerning the subsequent sale because of the possible prejudice to the defendant in trying all of the counts in the present indictment together.

Joinder of offenses is permissible under Rule 8(a) of the Federal Rules of Criminal Procedure if the offenses charged "are of the same or similar character or are based . . . on two or more acts or transactions connected together

or constituting parts of a common plan or scheme." The acts alleged here are all of a similar character in that each was a transaction in which a firearm was sold and the defendant failed to make a proper inquiry as to the identity of the buyer. Thus joinder is permissible under Rule 8(a). United States v. Clayton, 450 F.2d 16, 18-19 (1st Cir. 1971).

A more difficult question is whether this Court should grant a severance because of the possible prejudicial effect of the joinder. Fed. R. Crim. P. 14. A criminal defendant is prejudiced to a certain extent by every joinder because the jury may use evidence of one crime to infer a criminal disposition and therefore convict on another charge. Similarly, the jury may cumulate evidence and find guilt on a charge which, if considered separately, might not be provable beyond a reasonable doubt. Drew v. United States, 331 F.2d 85, 89-90 (D.C. Cir. 1964); United States v. Lotsch, 102 F.2d 35, 36 (2d Cir. 1939); 8 J. Moore Federal Practice 8.05[2].

In this case it is doubtful that evidence of both the 1974 sales and the 1975 sale would be admissible in a subsequent separate trial concerning only one episode. Neither the defendant's identity nor the existence of a relationship between the two sets of sales would be in issue in a second trial. Cf. Robinson v. United States, 459 F.2d 847 (D.C. Cir. 1972). Evidence concerning either sale might be admissible to show that the other sale was not a mistake, i.e. might be some evidence of intent. United States v. Adams, 434 F.2d 756, 758 n.3 (2d Cir. 1970). However, the potential prejudice resulting from the possibility that the jury might convict on both sets of charges based solely on the "bad man" principle is troublesome. See United States v. Jones, 374 F.2d 414, 419 (2d Cir. 1967). At a trial on one set of charges, the Court will be able to determine the admissibility of the other alleged acts, depending upon their probative value in light of defense claims. A severance thus minimizes any possible prejudice to the defendant, while preserving the government's ability to put the allegations of the severed counts before the jury upon a proper showing of relevancy.

In such circumstances, it is appropriate to grant the motion severing counts 5, 6, and 9. The only time conserved in trying all counts together is that period required to pick a second jury, since the time required to present evidence relating to the third sale is identical, whether such a presentation is part of one trial or takes place in a second trial. The potential prejudice to the defendant by far outweighs the time savings involved here.

Dated at New Haven, Connecticut, this 22 day of March, 1976.

Jon O. Newman

Jon O. Newman
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	Criminal No. N 75-95
WILLIAM CARLO	:	

DEFENDANT'S REQUEST TO CHARGE

The defendant, William Carlo, respectfully requests that this court include the attached proposed instructions in the charge to the jury.

THE DEFENDANT
WILLIAM CARLO

Gregory B. Craig
Federal Public Defender
770 Chapel Street
New Haven, Connecticut

Entrapment

In considering the issue of entrapment, bear in mind that the burden is on the defendant to adduce some evidence that a government agent by initiating the illegal conduct himself induced the defendant to commit the offense. If you find that the defendant William Carlo has adduced such evidence then the government must prove beyond a reasonable doubt that the inducement was not the cause of the crime, that is, that the defendant Carlo was ready and willing to commit the offense.

United States v. Berger,
433 F.2d 680, 684 (2d Cir. 1970)

United States v. Braver
450 F.2d 799, 804-805 (2d Cir. 1971)

Note: With respect to the above charge, the Second Circuit in Braver stated:

> ... we suggest that it would be preferable for the district courts of this circuit to use an entrapment charge that does not give to the jury two ultimate factual issues to decide on two different burdens of persuasion imposed on two different parties.
>
> The language quoted from United States v. Berger would obviously be appropriate.
>
> 450 F.2d at 805.

Entrapment

The defendant asserts that was a victim of entrapment as to the crime charged in the indictment.

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, he is a victim of entrapment, and the law as a matter of policy forbids his conviction in such a case.

On the other hand, where a person already has the readiness and willingness to break the law, the mere fact that government agents provide what appears to be a favorable opportunity is not entrapment. For example, when the government suspects that a person is engaged in the illicit sale of narcotics, it is not entrapment for a government agent to pretend to be someone else and to offer, either directly or through an informer or other decoy, to purchase narcotics from such suspected person.

If then, the jury should find beyond a reasonable doubt from the evidence in the case that, before anything at all occurred respecting the alleged offense involved in this case, the defendant was ready and willing to commit crimes such as charged in the indictment, whenever opportunity was afforded, and that Government officers or their agents did no more than offer the opportunity, then the jury should find that the defendant is not a victim of entrapment.

On the other hand, if the evidence in the case should leave you with a reasonable doubt whether the defendant had the previous intent or purpose to commit any offense of the character here charged, and did so only because he was induced or persuaded by some officer or agent of the government, then it is your duty to acquit him.

1 Devitt and Blackmar, p. 290-291

Character Evidence -- Reputation of Defendant

Where a defendant has offered evidence of good general reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, the jury should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Michelson v. United States
335 U.S. 469, 475, 480 (1948)

2 Devitt & Blackmar, p. 245.

Character Evidence -- Reasonable Doubt

The jury might give much weight to evidence of good character, bearing in mind that evidence of good character, when considered with all of the other evidence, may be sufficient in itself to create a reasonable doubt of guilt. In arriving at your verdict, you must consider all of the evidence in the case.

United States v. Cashio, 420 F.2d 1132, 1135 (5th Cir. 1970)

Also see, United States v. Cramer, 447 F.2d 210, 219 (2d Cir. 1971)

1 Devitt & Blackmar, Pocket Insert, pp. 135-136.

Count Three and Count Six

One of the issues relating to Count Three and Count Six of this indictment has been the obligation of a federally licensed firearms dealer to keep records of the receipt of guns when those guns have been obtained for his private collection.

A presumption exists that all firearms on a business premises are for sale and accordingly must be entered in the records required to be maintained under the law and regulations. However, it is recognized that some dealers may have personal firearms on their business premises for purposes of display or decoration and not for sale. Firearms dealers who have such personal firearms on licensed premises should not intermingle such firearms with firearms held for sale. Such firearms should be segregated from firearms held for sale and appropriately identified (for example, by attaching a tag) as being "not for sale." Personal firearms on licensed premises which are segregated from firearms held for sale and which are appropriately identified as not being for sale need not be entered in the dealers records.

From: Published Ordinances: Firearms
1975 Supplement, p. 5
Industry Circular 72-30: "Identifying personal firearms..."

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. N-7595
	:	
WILLIAM CARLO	:	

MEMORANDUM IN SUPPORT OF DEFENDANT CARLO'S REQUEST FOR AN ENTRAPMENT INSTRUCTION

Introduction and Summary

The defendant, William Carlo, respectfully requests that this Court instruct the jury on the defense of entrapment as set forth in United States v. Berger, 433 F.2d 680, 684 (2d Cir. 1970) and United States v. Braver, 450 F.2d 799, 804 (2d Cir. 1971).

When considering whether an entrapment defense is to be submitted to the jury, the trial testimony must be viewed in a light most favorable to the defendant, United States v. Dehar, 388 F.2d 430, 433 (2d Cir. 1968), no matter how improbable this court might find the defense version of the facts, United States v. Watson, 489 F.2d 504, 507 (3d Cir. 1973).

The defendant respectfully submits that he is entitled to an entrapment instruction for the following reasons: (1) there has been sufficient evidence to warrant a finding by the jury that the Government initiated the crimes charged in this indictment; and (2) there has been evidence submitted negating the defendant's propensity to commit these crimes. In the presence of such evidence,

the question of entrapment is for the jury, United States v. Riley, 363 F.2d 955, 959 (2d Cir. 1966), and it would be clear error for this court to deny the defendant's request for an entrapment instruction, United States v. Cohen, 431 F.2d 830, 832 (2d Cir. 1970). See also the Third Circuit's view of Riley and Cohen in United States v. Watson, supra at 509.

The Defendant's Version

The defendant respectfully submits that the following testimony has already been received or will be introduced into evidence in the course of this trial:

(1) Prior to the dates of the offenses charged in this indictment, the defendant had a long-standing professional and personal relationship with Officer C.J. Stites of the Bridgeport City Police;

(2) On the dates of the offenses charged in this indictment, Officer Stites was assigned as an undercover agent with the Southern Connecticut Regional Crime Squad;

(3) Prior to the dates of the offenses charged in this indictment, William Carlo reported an incident to Officer Charles Walkley of the Stamford City Police involving the alleged theft of a firearm from his premises by an individual named Ted Bansak. At the time Mr. Carlo reported this incident to Officer Walkley, Walkley was also serving as an undercover agent with the Southern Connecticut Regional Crime Squad.

(4) Prior to the dates of the offenses charged in this indictment, William Carlo had numerous discussions with Officer Stites about the unsavory nature of Mr. Bansak's character and the fact that Mr. Carlo believed that Bansak was involved in narcotics and illegal firearms transactions.

(5) Prior to the dates of the offenses charged in this indictment, William Carlo agreed to cooperate with Officer Stites in informing him of individuals involved in illegal activities and in aiding him to make arrests of such individuals.

(6) On July 11, 1974, the date of the illegal sale charged in Count One of this indictment, Ted Bansak called William Carlo and told him that he wanted to introduce Carlo to some friends of his from Massachusetts who had grenades and explosives they wanted to sell and who wanted to buy handguns without papers.

(7) Carlo's reason for meeting with Bansak and Bansak's associate was to make arrangements in his capacity as an undercover informant for Officer Stites. Carlo hoped to set up a meeting between Bansak's associate and Stites at which time Stites could arrest him for possession and sale of grenades.

(8) Bansak arrived at Carlo's premises with an individual he introduced as "Richie" -- actually Agent Richard Dochin from the Bureau of Alcohol, Tobacco and Firearms -- who informed Carlo that he wanted to buy handguns without papers. "Richie" also told Bansak he wanted to swap grenades for large calibre handguns without papers.

(9) Because of Carlo's first-hand knowledge of Bansak's character, because of Bansak's reputation in the Bridgeport area for being deeply involved in illegal acticity, and because of "Richie's" talk, dress and manner, Carlo believed that "Richie"

like Bansak was heavily involved in crime. "Richie" encouraged this impression.

(10) Carlo sold "Richie" a firearm without filling out the required forms because he thought it necessary to gain "Richie's" confidence for the purpose of arranging the grenade deal with Stites. Carlo told "Richie" he had a friend interested in buying grenades.

(11) Soon after the July 11 sale, Carlo reported to Stites that he had come into contact with an individual who said he came from Massachusetts and who had grenades and explosives he wanted to sell.

(12) Stites encouraged Carlo to do "whatever he could" to make arrangements for the sale. Stites then contacted his superior for permission to proceed with the investigation.

(13) On July 22, 1974, "Richie" recontacted Carlo and, at a second meeting in Carlo's work area, asked Carlo to sell him another handgun without papers. On this occasion, "Richie" was accompanied by Agent Charles Peterson, also of the Bureau of Alcohol, Tobacco and Firearms. Again the topic of grenades came up, and again Carlo informed "Richie" that he had a friend who wanted to buy the grenades or swap for them, and Carlo urged "Richie" to agree to a meeting.

(14) On July 22, 1974, Carlo sold "Richie" a second gun without papers, again with the intention ultimately of arranging a meeting between "Richie" and Officer Stites.

(15) In a conversation between Carlo and Officer Stites, Stites told him that his superior had authorized an investigation of Bansak's associate and that Carlo should make every effort to

set up the sale. The date of this conversation is uncertain, and there is no way of determining whether this conversation took place before or after the July 22 sale. */

(16) William Carlo has never been convicted of a criminal offense and has a reputation for honesty and integrity in the community.

1. There has been sufficient evidence to warrant a finding that the Government initiated the crimes charged in this indictment.

The first test of entrapment is no longer Judge Learned Hand's formulation in United States v. Sherman, 200 F.2d 880, 882-883 (2d Cir. 1952): "Did the agent induce the accused to commit the

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*/ William Carlo testified that Officer Stites did not explicitly forbid him from engaging in illegal activity in the course of his work for Stites. Under Dehar, supra, this Court must accept Carlo's version. In any event, it is not clear that Stites' instruction was given before the sales had been completed, if it was in fact given.

FPI—88—2-3-75—50M—887

offense charged in the indictment." As Judge Friendly pointed out in Riley, supra, at 958:

> Since, as we have lately had occasion to explain, the first element goes simply to the Government's initiation of the crime and not to the degree of pressure exerted, United States v. Pugliese, 346 F.2d 861, 863 (2d Cir. 1965); United States v. Jones, 360 F.2d 92, 96 (2d Cir. 1966), it can be argued with some force that submission to the jury is demanded whenever there is evidence that would warrant a finding of such initiation...

See United States v. Cohen, supra, at 832.

The quantum of evidence needed to satisfy this test is set forth in Berger, supra at 684, and Braver, supra at 804-805: "... it will be enough to tell the jury that if it finds some evidence of government initiation of the illegal conduct..." (Emphasis added)

The defendant respectfully submits that this aspect of the entrapment test is satisfied by the following evidence:

-- Bansak contacted Carlo and told him of his friend's desire for handguns without papers; (July 11)

-- Dochin told Carlo he wanted to buy a handgun without papers; (July 11)

-- Dochin recontacted Carlo and told him he wanted to buy another handgun without papers; Carlo did not call him; (July 22)

-- Stites told Carlo to do whatever he could to set up the grenade sale.

It seems only fair to point out that had Stites been an agent of the ATF and had Stites been aware of the undercover activities of Dochin and Peterson and Bansak, the entrapment defense would be so compelling that dismissal might be warranted as a matter of law. See United States v. Bueno, 447 F.2d 903 (5th Cir. 1971).

2. There has been evidence submitted negating the defendant's propensity to commit these crimes.

In United States v. Riley, supra at 959, the Second Circuit set forth the second factor justifying an entrapment instruction:

> The production of any evidence negating propensity, whether in cross-examination or otherwise, requires submission to the jury, however unreasonable the judge would consider a verdict in favor of defendant to be. (Emphasis added.)

The defendant respectfully submits that this aspect of the entrapment test is satisfied by the following evidence:

-- The testimony of the character witnesses as to William Carlo's reputation for honesty, truth, and integrity;

-- William Carlo's testimony that he would not have sold the guns without papers except to persuade "Richie" to agree to sell the grenades to Stites;

-- The fact that William Carlo has no criminal record;

-- The fact that William Carlo was co-operating with Officer Stites as an undercover informant to aid Stites in his law enforcement efforts.

Conclusion

For all the reasons set forth above. the defendant respectfully requests that his proposed instruction on the defense of entrapment be included in this court's charge to the jury.

THE DEFENDANT
WILLIAM CARLO

Gregory B. Craig
Federal Public Defender
770 Chapel Street
New Haven, Connecticut

It is a general intent crime. He testified, himself, that he knew he should have recorded the papers, that he did not do so, and it is almost required, and that is all that is required.

MR. CRAIG: I think the memorandum speaks for itself. The first obligation I think the Court has in considering the request is to construe the evidence and the testimony in a light most favorable to the defendant, which I think Mr. Dow, in his presentation of the facts, your Honor, has not done.

There is no question that there is conflicting evidence within the defendant's case, itself, but I think the case law in this area -- and it is true for the 3rd Circuit -- requires that, in considering whether or not an entrapment defense should be given, the evidence should be looked at in the light most favorable to the defendant.

THE COURT: In accepting that, which I do not have any trouble doing, the defendant's version was that the officer asked him if he would be willing to point out people doing illegal

things, grenades transactions --

MR. CRAIG: If you read the memorandum, our claim of entrapment is not restricted just to his association with Officer Stites. Our claim of entrapment also comes from the initiation that came from Bansak and Agent Dotchin requesting that Carlo sell them guns without papers. I think by itself, without any reference to Stites, that initiation by Dotchin and Bansak is sufficient to surmount the hurdle of inducement that the Court has required in the past. The threshold --

THE COURT: That would convert every undercover into an entrapment case. They did know more than any buyer, any undercover agent buyer of weapons or drugs. They came to a man and said have you got something for sale.

MR. CRAIG: No. The testimony I think is different. They said we want to buy guns without papers; will you sell us guns without papers.

It seems to me that may, in fact, be correct, that almost any undercover sale where the proposal of illegal transaction comes from the government's side entitles that defendant, if he wished to request it, an entrapment charge.

Whether or not the jury then believes it or whether or not the predisposition part of the entrapment test is taken care of is another question.

THE COURT: If in the **Anglada** decision they did not give an entrapment charge and the Court of Appeals says that was right because the evidence was so clear that the defendant was willing to do what was suggested to him, here he is not only willing to do it but there is not anything like inducement by the undercover agent. He is simply tendering him with a proposition.

MR. CRAIG: "Inducement" I do not think is the proper word at this point, because under the Reilly decision the threshold that the defendant has to surmount is only showing initiation from the government side -- and the precise language is "Some evidence of government initiative of criminal activity is sufficient to warrant entrapment defense instruction."

THE COURT: In the **Anglada** decision it was rejected.

MR. CRAIG: The **Anglada** decision went off on plain error, whether or not the defendant requested it. The defendant did not request an

entrapment instruction in that case.

THE COURT: I thought the Court said there was no entitlement, that the District Judge need not give an entrapment instruction on those facts.

MR. CRAIG: Are you talking about **Anglada** or -- I am not familiar with the **Anglada** case, your Honor, so I am not prepared to argue from that basis. But I think that, over and above the question of inducement or initiative, there is language in the Reilly decision which would imply that, if the question of predisposition is negatived in the defendant's case by cross-examination, by defense testimony, by any evidence, that by itself --

THE COURT: Here it is not negatived; it is asserted. Your claim to me yesterday was that your client was willing to do this and he had a good reason to do it; namely, he thought it would help set up a grenade transaction.

MR. CRAIG: But the predisposition was not there absent his association, our claim is, with Stites.

THE COURT: That has nothing to do with whether he was entrapped by the undercover agent.

MR. CRAIG: I think it clearly is related, your Honor. The predisposition question and the initiation by the government of a criminal activity are clearly related in this case, and the initiative -- it was not Carlo, your Honor, that called Bansak; it was Bansak that called Carlo. As to whether or not it was Stites that requested Carlo or Carlo that requested of Stites, there clearly was some agreement there.

THE COURT: Now we are a long way from where we were yesterday. Yesterday you did not want an entrapment charge.

MR. CRAIG: I understand that.

THE COURT: I thought the claim was that Stites' conduct in some way created a defense for the defendant.

MR. CRAIG: In combination with the conduct of the undercover agents of the ATF.

It is not your classic entrapment, which is what I said at the conclusion of the court day yesterday. I think it is a clear derivative of an entrapment defense, but it is not one agent from the same bureau setting up criminal activity, with another agent of the bureau

supplying the incentive to do it. There are two different law enforcement agencies involved, and it seems to me clear that, independently of each other, without any governmental misconduct that we can allege, Stites and Dotchin -- it is entrapment by circumstances and accidents and coincidence rather than entrapment by design. But entrapment it is nonetheless, simply because there was an initiative on the part of an undercover agent and informants from the ATF to Mr. Carlo, and Mr. Carlo almost simultaneous with or very soon before that had made an arrangement with another law enforcement agency to try to cooperate in the apprehension of these kinds of people.

I think that is a jury question, your Honor, as to whether or not that was in fact what happened, and I think I really --

THE COURT: That is the difficulty. Even if it happened just the way you say, I do not see what the jury question is, because I do not think that is a defense in law.

An undercover agent comes to somebody and says "Will you sell me a weapon," and the

defendant says to himself, "I think that it will serve the larger purposes of law enforcement if I commit a crime, and that may lead to the apprehension of people committing bigger crimes." If he thinks that, he is just wrong.

MR. CRAIG: I understand that. What I am saying is, absent the relationship he had with Stites and absent the initiation from the undercover agent of the ATF, he would not have sold guns without papers. That is the claim, and so, consequently, as a result of government activity or association with Carlo --

THE COURT: That proves way too much. That is a "but for" argument. That is true of every undercover buy in America. If the buyer had not come up, there would not have been a sale that instant.

MR. CRAIG: That is the underlying policy behind the entrapment defense.

THE COURT: No. The underlying policy is something has happened that really ought not to have happened, and a defendant thereby has a defense he otherwise would not have.

MR. CRAIG: But caused by the creative

manipulation of government conduct, the defendant commits a crime that he otherwise would not have committed but for the government conduct.

THE COURT: The very language you request says the burden is on the defendant to adduce some evidence that a government agent, by initiating the conduct, induced the defendant to commit the offense.

MR. CRAIG: That is correct.

THE COURT: Who induced this defendant to sell guns without papers?

MR. CRAIG: I am saying, your Honor, it is a combination of Bansak and Dotchin and Stites, and those are all government agents.

THE COURT: Stites did not tell him to do that at all. There is no evidence that Stites told him to go commit firearms offenses.

MR. CRAIG: That is correct.

THE COURT: So I cannot include him. Then I am left with the buying undercover people.

MR. CRAIG: There is evidence that he did say do whatever you have to do or do what you think is necessary, the language I think I quote in the memorandum, which is a rather open-ended

statement. The relevance of Stites' testimony as to his memory in the chronology of this thing is important to me, because --

THE COURT: I am taking your defendant's version. He said, "He asked me to go ahead and make arrangements for the grenade transaction." That certainly does not mean he was induced to commit any crimes along the way that he thinks will lead to grenade transaction.

MR. CRAIG: Noting No. 12 on page 3, Stites encouraged Carlo to do whatever he could to make arrangements for the sale. I am not contending that Stites told him specifically that he could violate the law. What I am saying is that but for that association between Carlo and Stites and but for the initiative that came from Dotchin and Bansak, there would have been no crime committed; and that amounts to an entrapment.

THE COURT: It is the last conclusion that I do not understand. Lots of circumstances may be such that, without them, there would not be a crime, but that does not mean that those who bring about those circumstances create a defense for a person who makes his own decision that what

he wants to do, even for allegedly a good motive, forgetting the Government's claim that the reason he did this was to make an extra $50, which he did not segregate and which he pocketed -- but, leaving that aside, on his theory of it, his argument is he committed a crime because he thought it would help law enforcement catch other criminals in other transactions. I just do not understand that is a defense.

MR. CRAIG: That is not exactly our version of what happened, your Honor. I think it is much more complete in the memorandum as I set forth the defendant's version. I think you are simplifying it unfairly. I think it is a combination of an initiation from Bansak and Dotchin and an association with Stites that brought about the sale of the guns without papers.

Let me put a hypothetical: Would you concede that it would be a classic entrapment case if Stites had been a member of the ATF and had developed that association with Carlo?

THE COURT: I doubt that would change the situation at all.

I am not suggesting that there isn't

entrapment here because of the two-sovereignty notion that the police officer is not part of the same government as the ATF people. That might be a distinction, but I am not relying on that at all.

The most that Stites does on the defendant's version is suggest to him that it would be helpful to law enforcement if he can figure out a way to catch somebody else making the grenades sale. That is the most that Stites does.

MR. CRAIG: And encouraged him.

THE COURT: Let's say he tells him "It is your civic duty to help" --

MR. CRAIG: And do whatever he could.

THE COURT: I did not write down that he ever said "Do whatever you could." I do not really know -- I do not think that is in the record, very frankly.

MR. CRAIG: My memory is different from yours. I remember him saying that.

THE COURT: Frankly, it is a little hard to accept that with an officer who is very positive that he gave cautions as to what not to do. For him to say "Do whatever you can" is a

little hard to accept. But, even if he said that, he certainly in no way told him to commit a crime, and that is the essence of entrapment, that somebody prevails upon a person to commit a crime, and Stites did not do that.

If the undercover officers did any inducing under **Anglada** they met a person who on your claim was presupposed to sell, and there is no evidence that he wasn't. Your claim is he was predisposed and had a good reason to be predisposed to sell because he thought he was serving a higher purpose, but that is not a defense in law.

MR. CRAIG: And would not have been predisposed to sell but for his association with Stites and the --

THE COURT: That is just the sheerest speculation.

Supposing Stites was not in the picture and he came in and said "I thought I had a duty as a citizen to help catch people who sell grenades."

MR. CRAIG: But that is not what the testimony is.

THE COURT: But the theory is either just as good or, in my view, just as bad. You cannot

penaliz Stites for reminding a person that he ought to be a good cit'zen.

MR. CRAIG: No one is penalizing Stites, and no one is making any accusation --

THE COURT: It results in a crime going unpunished. That is --

MR. CRAIG: I cannot set it out any better than I have.

THE COURT: I understand your point, I think, but I do not believe that this is the kind of fact situation that justifies an entrapment charge. Obviously, I am going to let you argue to the jury that, on the facts before them, they just ought not to convict this man. It really amounts to a nullification argument. I am not going to prohibit you from making that argument. I think these are facts that you are entitled to tell a jury, that as community representatives they should not convict a person who finds himself in these circumstances; and, if they choose not to, that is fine. They have that prerogative. But I think I have to tell them that the standard is, if the elements of this offense are established, they should convict, and that a person's thinking

he is helping to catch criminals in some other activity is not a defense. Having heard that, if they say "That's all right, Judge, we still think this man shouldn't be convicted," they are entitled to make that judgment. But I think that is the only way it can go to the jury. I cannot tell them that they should acquit a person because he thought he was picking up a suggestion of an officer and in his mind thought that suggestion included committing little crimes in order to apprehend those who commit bigger crimes. I do not think that is the law. If the jury, in their lay aspects, want to bring in an acquittal, they, of course, can do that, but I do not think I can tell them that is the law, because I do not think it is.

MR. CRAIG: If I could change the focus of the discussion we have had today from the question of inducement and initiation to the question of propensity to commit a crime, I still think that the second point that is set forth in Reilly, that the production of any evidence negating propensity does not have to be specifically with respect to a certain transaction -- it is

propensity to commit any kinds of crimes, I think, whether developed on cross-examination or the direct testimony of the defendant --

THE COURT: But this evidence is even more undisputed than **Anglada** was. There was a little evidence there, and the Court said no, you don't have to give a charge. Here, your argument is he was predisposed, that is your complaint, and **Anglada** they argued he was not predisposed.

MR. CRAIG: You are correct that on July 11th he was predisposed.

What I am saying is that, as a matter of his life and character in the general world, as the character testimony adduced, his lack of criminal record states, he was not predisposed. He had no predisposition for committing crimes. And the circumstances that drew him into this transaction did make him predisposed. I think that satisfies that element of the Reilly test.

If we attack the question of predisposition, which I think we have done in this case, your Honor, I think we are entitled to an entrapment instruction, because that is, in effect, what

has happened. Circumstances generated perhaps by himself but generally also by government agents -- the only actors in this whole affair except for Bill Carlo are government agents -- made him predisposed to commit that offense, and the predisposition was not there absent the government. That is really our claim. And so any evidence negating propensity to commit crimes, the Reilly standard is met, and I think we are entitled to an entrapment instruction on that theory alone.

THE COURT: I just disagree. I am not going to submit it to the jury on that theory. I do not see where any officer did any inducing. I do not see where there is any evidence that the defendant was in any way overborne.

You are quite right; there are circumstances which led him to think he was accomplishing some useful purpose by committing a crime on your theory. Government, of course, disputes that, but on his evidence that is the claim, that he came to that conclusion, and that he came to that conclusion that he could commit a crime to catch a bigger criminal. He came to that conclusion after hearing government agents say this to him.

I just do not believe that is a defense at all. A person just cannot listen to government agents and then come to the erroneous conclusion that it is all right to go commit a crime. The implications of that doctrine are rather frightening.

Supposing he got the idea that not only was Dotchin a seller of grenades but Dotchin was somebody who would kill people, so what he thought he ought to do is kill Dotchin in order to be sure this great menace did not do anything terrible. You would not be saying that was justified.

MR. CRAIG: It seems to me, your Honor, there is reasonable-man standard here, too, as to whether or not a technical violation might be perceived as a technical violation by a federally-licensed gun dealer and not keeping his 4473 form.

THE COURT: That is what this statute is all about. It is to make sure that those who are licensed to deal in firearms do observe the technicalities and that they do not dispense with them because of their mistaken notions that they are helping catch a criminal.

He is a licensed dealer in firearms. He is under certain rather strict and technical federal regulations. If he wants to be a cop, he can join the police department. He is a licensed dealer.

MR. CRAIG: I was responding, your Honor, in response to your analogy with a murder, which I think is considerably less at least probative to this argument than my claim that, in fact, this could reasonably be viewed as a technical violation rather than as a major crime, a technical violation that law enforcement agents might perform every time.

You did have the testimony of Mr. Dotchin that, if a private citizen crossed state lines to purchase a gun from a Connecticut gun dealer, it would be a criminal offense.

THE COURT: That may be. There are many technical offenses in this area, and how they should be dealt with is first a matter of prosecutor discretion, and, if there is a conviction, a matter of sentencing. But as to whether or not they are a violation and whether they are excused by a mistaken view that, based on

what people told you, you think you are helping enforce the law by breaking it -- I do not think that is a defense in law.

Where are we with your efforts to contact your witness?

MR. CRAIG: I do not know.

A VOICE: He has not returned from his doctor's appointment, but message he left was that he was to meet a friend of his here at 141 Church Street for lunch today. I take it that friend is Mr. Kelly. So it is a possibility that Mr. Constable may show up here at any time.

MR. CRAIG: We can inquire if that is true.

MR. DOW: Mr. Porter spoke to Mr. Kelly, and he mentioned he might be in town, and, if so, they could get together for lunch. If he is coming over -- I do not think that his testimony is going to shed too much light on what Mr. Kelly said.

THE COURT: I think they ought to have an opportunity, if it can reasonably be done, to talk with him. He is a witness to those events, and, if he has a different version, the jury is entitled to hear it.

AFTERNOON SESSION

MR. DOW: There is one thing that --

MR. CRAIG: During the lunch break my investigator was not able to contact the individual whom we discussed before, and it was our determination that we would not call that witness in surrebuttal.

THE COURT: You have no further evidence?

MR. CRAIG: No further evidence.

THE COURT: Both sides ready to argue?

MR. DOW: Right.

There is one thing, your Honor. I am not sure that this happened. I think in discussing the request to charge of Mr. Craig with regard to the entrapment defense your Honor might have confused the **Licursi** case with the **Anglada** case. I am not sure.

THE COURT: I may have.

MR. DOW: **Licursi** was the one that affirmed denial of entrapment instruction, and **Anglada** overturned the trial court for failure to give the **Anglada** entrapment instruction.

THE COURT: All right.

(Jury in at 2:20 o'clock p.m.)

THE COURT: All right.

Ladies and Gentlemen, the evidence in the case is closed, and we will now hear the arguments of counsel, and then I will give you the instructions of law, and then you will have the case for deliberation.

The arguments of counsel are not evidence. The evidence is what you heard from the witnesses plus the exhibits you will have with you in the jury room. Nevertheless, the arguments of counsel are usually helpful to a jury to recall the evidence to you and so you will understand the claims each side makes from the evidence.

Mr. Dow.

(Whereupon, Mr. Dow summed up for the Government and Mr. Craig summed up for the Defendant.)

THE COURT: Ladies and Gentlemen, I will give you the instructions right now. They are not very lengthy. Then you will have the case for deliberation.

First of all, I will excuse Mr. DeLucia, the alternate, who sat with us for a few days. As we picked the jury sometime ago, it was helpful

to have two alternates, because, as it turned out, one of them is now a member of the jury.

I will excuse you at this time, since we have reached this point and we do have twelve members. You will be summoned again for jury duty by the Clerk's office.

All right.

Ladies and Gentlemen, you have heard the evidence and heard the arguments of counsel, and it is now my responsibility to give you the instructions of law which you are to apply to the evidence as you determine that evidence to be. It is exclusively the function of the Court to set forth the rules of law and the instructions as to their application.

On these legal matters you must take the law as I give it to you. You are not at liberty to do otherwise. But as to decisions concerning the facts of the case, you are the sole judges of the facts.

You are to recollect the testimony, weigh it, draw your own conclusions from it, and make up your own mind as to what the facts are. If counsel referred to the facts or I refer to the

facts in any way different than the way you recall it, you rely on your own recollection.

This being a criminal case, as in every criminal case, the defendant is presumed to be innocent unless and until proven guilty beyond a reasonable doubt. This presumption of innocence was with the defendant when he was first presented for trial. It continues with him throughout the trial. As far as you are concerned, he is innocent and he continues innocent unless and until such time as all the evidence produced in the trial and considered by you in the light of these instructions satisfies you beyond a reasonable doubt that he is guilty.

The burden of proving the defendant guilty of any of the crimes with which he is charged is upon the Government. The defendant does not have to prove his innocence. This means that before you may find the defendant guilty of any counts, the Government must prove to you beyond a reasonable doubt each and every element necessary to constitute the crime charged.

Whether that burden of proof resting on the Government has been sustained depends not on the

number of witnesses nor on the quantity of the testimony but on the nature and the quality of the testimony.

As to that phrase, "reasonable doubt," it simply means a doubt founded upon reason. As the words imply, it is a doubt as will be entertained by a reasonable person after all the evidence in the case is analyzed, compared and weighed.

A reasonable doubt may arise not only from the evidence that is in the case but also from a lack of evidence. Since the burden is on the Government to prove the defendant guilty beyond a reasonable doubt of every element of the crime charged, a defendant has the right to rely on a failure of the prosecution to establish such proof.

However, absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and your judgment and such that you feel conscientiously bound to act upon. It is not a fanciful doubt or whimsical or capricious doubt, for anything relating to human affairs and depending on human testimony is open to some possible or imaginary doubt. Reasonable

doubt is such doubt as would cause a prudent person to hesitate before acting in matters of importance to himself or herself.

So, if the evidence warrants, in your judgment, the conclusion that the defendant is guilty so as to exclude every other reasonable conclusion, you should declare him to be guilty. On the other hand, if on all the evidence you have a reasonable doubt as to the guilt of the defendant, you must find him not guilty.

This case involves criminal charges brought against the defendant, William Carlo. They are set forth in an indictment, a copy of which you will have with you in the jury room.

I will discuss the specific charges in just a moment, but let me say a word about the function of an indictment.

An indictment by a grand jury is simply the formal method of accusing a defendant of certain crimes. It defines the crimes charged and the manner of their alleged accomplishment. But the indictment, itself, is without any bearing or any significance in your consideration of the case and is to be accorded no weight by you in

determining the guilt or innocence of the defendant.

By his plea of not guilty, the defendant has denied each and every allegation set forth in the indictment.

As you may know, when a grand jury meets to consider whether to indict, they only hear the government's side of the case. The defendant is not there; defense counsel are not there; there is no cross-examination. So they only hear one side. So the fact that they have returned an indictment is without any bearing on your consideration of the case. You are the only jury that has heard all of the evidence to be presented in the case.

This indictment contains four counts. Each count charges a separate violation of federal law. You should consider each count separately and return a verdict as to each count, but your verdict on any one count should not influence your verdict on any other count.

Before explaining the elements of each count in detail, let me in general terms explain the counts so you will understand the over-all

allegations. Two different violations are alleged with respect to each of two weapons.

The first two counts relate to the Spanish 32-caliber semiautomatic pistol. That is the larger of the two weapons in evidence. Counts Three and Four relate to the smaller weapon in evidence. That is the 22-caliber Derringer. Counts One and Three concern the sale of each of these weapons. Counts Two and Four concern the failure to record the name, age and residence of the purchaser on a record of those sales.

Let me take them up in some more detail.

Counts One and Three each charge a violation of a section of the Criminal Code that reads as follows:

"It shall be unlawful for any licensed dealer to sell or deliver any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the state in which the licensee's place of business is located."

The indictment charges in Count One that on or about July 11, 1974, at Bridgeport, in the District of Connecticut, William Carlo, being a licensed dealer of firearms and ammunition,

knowingly did sell and deliver to Richard Dotchin a firearm -- that is, a Spanish 32-caliber semi-automatic pistol, serial No. 464 -- William Carlo then knowing and having reasonable cause to believe that said Richard Dotchin did not reside in the State of Connecticut, in which William Carlo's place of business was located at the time of said sale and delivery.

Count Three alleges the same offense on July 22, 1974 with respect to the 22-caliber Derringer.

There are four elements of the offenses charged in Counts One and Three. I think in argument there was reference to three. I have just grouped them a little differently. As I break them down and explain them to you, there are four elements of Counts One and Three, each relating to the sale of the two weapons.

First, that on the date alleged the defendant was a federally-licensed firearms dealer;

Second, that on the date alleged the defendant did sell the particular firearm in question to Richard Dotchin;

Third, that the sale was made knowingly;

Fourth, that at the time of the sale the defendant either knew or had reasonable cause to believe that Richard Dotchin did not reside in Connecticut.

As to that third element, that the sale was made knowingly, an act is knowingly done when it is done voluntarily and intentionally and not because of mistake or inadvertence or other innocent reason.

Count Two charges a violation of a different statute. That statute reads as follows:

"It shall be unlawful for any licensed dealer to sell or deliver any firearm to any person unless the licensee notes in his records required to be kept pursuant to (a particular section of the law) the name, age and place of residence of such person."

Count Two of the indictment reads as follows:

"On or about July 11, 1974, at Bridgeport, in the District of Connecticut, William Carlo, the defendant herein, being a licensed dealer of firearms and ammunition, knowingly did sell and deliver to Richard Dotchin a firearm" -- that is,

a Spanish 32-caliber semiautomatic pistol, Serial No. 464 -- "without noting in his records required to be kept pursuant to Title 18, United States Code, Section 922 B-5" -- let me read the last part to you again -- "without noting in his records required to be kept pursuant to" the section I referred to "the name, age and place of residence of the same Richard Dotchin."

Count Four alleges that same offense on July 22nd with respect to the other weapon, the 22-caliber Derringer.

With respect to each of these offenses -- that is, Count Two and Count Four -- there are again four elements of each of those offenses:

First, that on the dates alleged the defendant was a federally-licensed firearms dealer;

Second, that on each of the dates alleged the defendant did sell the firearm in question to Richard Dotchin;

Third, that the sale was made knowingly;

And, fourth, that at the time of sale the defendant did not note on the record required to be kept by law -- that refers to the form 4473 --

the name, age and place of residence of Richard Dotchin.

And "knowingly" has the same meaning in Counts Two and Four as the definition I previously mentioned to you with respect to Counts One and Three.

These four charges set forth in this indictment are the only charges that you are concerned with in this case. There has been a reference to another episode in August of 1974, but that episode is to be considered only to the extent you think it may have some bearing on the defendant's credibility as a witness or to whatever extent you think it may bear on the defense claims inthis case. But I emphasize the defendant is not on trial in this case for the August 13th episode and you may not use any evidence concerning that episode for any purpose other than the limited ones I have just mentioned.

The defendant has offered evidence to show that his reason for making the sales and for not maintaining the required records was to win the confidence of the purchasers to the point where he would be able to lure them into going ahead

with the transactions in which they would exchange grenades for handguns, at which time the defendant testified he would help arrange for his friend from the Southwest Regional Crime Squad to arrest them. I instruct you that it is no defense to any of the crimes charged in this indictment that the defendant thought that, by committing the acts which constitute the crimes charged, he would be aiding a law enforcement officer.

The offenses in this indictment are established if you find beyond a reasonable doubt that the defendant did or failed to do the acts constituting the offenses and that he took his action or failed to take required action knowingly. A person may not avoid liability for the offenses charged simply because he thinks his commission of these offenses will lead to the arrest of someone for committing other offenses.

In general, you are entitled in deciding whether the elements of these four offenses have been made out to consider two types of evidence, direct evidence -- that is the evidence of eye-witnesses -- and circumstantial evidence -- that

means evidence of facts proved from which a jury may infer by a process of reasoning other facts sought to be established as true.

Different inference may be drawn from the facts and circumstances in a case whether proved by direct or circumstantial evidence. It is for you to decide which common sense inferences you choose to draw from the facts you find established.

Circumstantial evidence may be received and is entitled to such consideration as you think it deserves depending on the inferences you think it appropriate and reasonable to draw. No greater degree of certainty is required when evidence is circumstantial than when it is direct, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant before there can be a conviction.

In deciding whether the elements have been established beyond a reasonable doubt, you will have to give consideration to the credibility -- that is, the believability -- of the witnesses you have heard. You are entitled to consider the impression each made on the stand; did he appear to be telling the truth; did he appear to be

honest; did he appear to be a person who could have observed accurately what he is telling you, who would be likely to have remembered it accurately and who was capable of reporting it to you accurately.

Another question you may want to have in mind is whether the testimony he gave you was plausible; does it ring true, or are there inconsistencies in it; how does it fit with other evidence you find is established.

You are also entitled to consider whether any witness whose testimony you are considering has any interest or bias in the outcome of the case. Now, simply because a person may have some interest in the outcome of a case doesn't mean his testimony is to be disregarded. A person may have an interest in the outcome of a case and yet be entirely accurate and credible in all his testimony, but it is simply a factor you are entitled to bear in mind.

If you find that a witness has been deliberately falsifying on some material point, you are entitled to take that into account in considering whether he has testified falsely on

other points. Of course, a person may simply be honestly mistaken on one point and accurate on other points, and a person may even be deliberately lying on one point and still be accurate on other points. But, if you find that a witness has deliberately lied on one material subject, it is only natural you would be suspicious of his testimony on other subjects, and you would be entitled to disbelieve his testimony in that event.

Whether you accept or reject testimony, if it is uncontradicted, is entirely up to you. So, in short, bring to bear the same common sense and sound judgment in assessing the witnesses you heard as you would in deciding matters of credibility on important questions that come up in your daily lives.

Now, a defendant who wishes to testify is a competent witness, and a defendant's testimony is to be judged in the same way as any other witness. And similarly with respect to the law enforcement officers you have heard; their testimony is to be judged by the same standards as any other witnesses, and no special consideration as to their credibility should be accorded simply

from the fact that they are law enforcement officers.

Whereas in this case a defendant has offered evidence of good reputation for truth and veracity, for honesty or as a law-abiding citizen, a jury is entitled to consider such evidence along with all the other evidence in the case. Evidence of a defendant's reputation inconsistent with those traits of character ordinarily involved in the commission of the crimes charged may be sufficient to create a reasonable doubt, since the jury may think it improbable that a person of good character in respect of those traits would commit such a crime. But the jury should bear in mind the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Ladies and Gentlemen, I press upon you, you are duty-bound as jurors to apply the law as I have explained it to you to the facts of this case as you find them.

When you reach the jury room, select one of your number as the foreman or forelady for your deliberations, determine the facts on the basis

of the evidence, and apply the law as I have explained it; and then render your verdicts in this case fairly, uprightly and without a scintilla of prejudice. When you reach a verdict on any one count, it must be unanimous.

It is the duty of each juror to discuss and consider the opinions of other jurors. Despite that, in the last analysis it is your individual duty to make up your own mind and to decide this case on the basis of your own individual judgment and conscience.

When you reach the jury room, I will ask you to wait just a moment. You can pick your foreman or forelady, but I will ask you to wait a moment until the Clerk has brought the exhibits and the indictment to the jury room. When that has happened, then begin your deliberation, and when you have reached your verdicts let the bailiff know and return to the courtroom and announce your verdicts.

The jury may be excused.

(Jury out at 3:50 o'clock p.m.)

THE COURT: Does the Government have exceptions or further requests to charge?

MR. DOW: No, I do not, your Honor.

MR. CRAIG: My exception is the exception that I requested an additional charge on entrapment defense.

THE COURT: I have indicated why I do not think it is an appropriate case for an entrapment charge, so I won't charge further on that.

Are the exhibits in order to go to the jury?

THE CLERK: Yes, they are.

THE COURT: I have asked that the last version of the indictment be retyped again, because in the retyping that eliminated Counts Five and Six there is just a typographical error in the other counts. But the exhibits can go to the jury now, and then, as soon as the indictment is retyped, if counsel can both look at it and if they are satisfied it correctly states Counts One through Four, then the marshal can hand that indictment to the jury as well. But the exhibits might as well go now.

(A recess was taken.)

(Jury in at 4:40 o'clock p.m.)

THE CLERK: Ladies and Gentlemen of the jury, have you agreed upon a verdict in the case

CERTIFICATION

The undersigned hereby certifies that a copy of the Appellant's Brief and Appendix to the Brief have been sent postage pre-paid to the Office of the United States Attorney, Post Office Box 1824, New Haven, Connecticut, this, the 28th day of July, 1976.

Gregory B. Craig

Gregory B. Craig